UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Ex parte ROBERT LEE ANGELL and JAMES R. KRAEMER

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Appeal 2014-008555[1]
Application 11/862,279[2]
Technology Center 3600

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Before MURRIEL E. CRAWFORD, ANTON W. FETTING, and
NINA L. MEDLOCK, *Administrative Patent Judges*.

MEDLOCK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's final
rejection of claims 1–25. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

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[1] Our decision references Appellants' Appeal Brief ("App. Br.," filed
March 7, 2014) and Reply Brief ("Reply Br.," filed July 31, 2014), and the
Examiner's Answer ("Ans.," mailed June 4, 2014) and Final Office Action
("Final Act.," mailed December 30, 2013).
[2] Appellants identify International Business Machines Corporation as the
real party in interest. App. Br. 2.

CLAIMED INVENTION

Appellants' invention "is directed to a computer implemented method, apparatus, and computer usable program product for using dynamically gathered digital video data to generate an optimal marketing strategy to improve sales based on patterns of events in the retail facility" (Spec. ¶ 3).

Claims 1, 14, 21, and 22 are the independent claims on appeal. Claim 1, reproduced below, is illustrative:

> 1. A computer implemented method for generating an optimized marketing strategy for improving sales, the computer implemented method comprising:
>
> identifying an item in a plurality of items selected for purchase by each customer in a plurality of customers associated with a retail facility to form a selected item;
>
> identifying at least one item in the plurality of items selected for purchase by each customer in the plurality of customers that is related to the selected item to form a set of related items;
>
> parsing event data associated with the plurality of customers to identify patterns of events associated with a selection of the selected item by each customer in the plurality of customers, wherein the event data comprises metadata describing events associated with the plurality of customers and the plurality of items;
>
> parsing the event data associated with the plurality of customers to identify patterns of events associated with a selection of at least one item in the set of related items by customers in the plurality of customers;
>
> identifying, by a processing unit, events in the patterns of events associated with the selection of the selected item and in the patterns of events associated with the selection of the at least one item in the set of related items, wherein the events result in a purchase of at least one item in the set of related items by the customers to form optimized events, and wherein the purchase of the at least one item in the set of related items by the customers results in an increase in profit or an increase in revenue; and

> generating a marketing strategy using the optimized
> events, wherein the marketing strategy comprises a set of
> strategies for increasing purchases of items in the set of related
> items by the customers.

REJECTIONS

Claims 1, 4–14, and 16–24 are rejected under 35 U.S.C. § 103(a) as unpatentable over Huang (US 2008/0004951 A1, pub. Jan. 3, 2008), Miller (US 2006/0116927 A1, pub. June 1, 2006), and Reich (US 2011/0004511 A1, pub. Jan. 6, 2011).

Claims 2, 3, and 15 are rejected under 35 U.S.C. § 103(a) as unpatentable over Huang, Miller, Reich, and Walker (US 2009/0198625 A1, pub. Aug. 6, 2009).

Claim 25 is rejected under 35 U.S.C. § 103(a) as unpatentable over Huang, Miller, Reich, and Giraud (US 2010/0299210 A1, pub. Nov. 25, 2010).

ANALYSIS

Independent Claim 1 and Dependent Claims 4–13

We are persuaded by Appellants' argument that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 103(a) because none of Huang, Miller, and Reich, individually or in combination, discloses or suggest identifying events common to the selection of a selected item and the selection of at least one related item where the events result in the purchase of at least one related item, i.e.,

> identifying, by a processing unit, events in the patterns of events
> associated with the selection of the selected item and in the
> patterns of events associated with the selection of the at least one
> item in the set of related items, wherein the events result in a
> purchase of at least one item in the set of related items by the

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customers to form optimized events, and wherein the purchase of the at least one item in the set of related items by the customers results in an increase in profit or an increase in revenue[,]

as recited in claim 1 (App. Br. 9–14; *see also* Reply Br. 2–5).

The Examiner acknowledges that Huang and Miller do not disclose the argued limitation, and relies on Reich to cure this deficiency (Final Act. 4–5 (citing Reich ¶ 79; claims 1, 34)). However, we agree with Appellants that there is nothing in the cited portions of Reich that discloses or suggests correlating events between both a selected item and related items, as called for in claim 1 (App. Br. 12–14).

Reich is directed to a system and method for combining the delivery of advertising with weather predictions that are limited in geographical area and time (Reich, Abstract), and discloses that advertisements are delivered to a user based on the user's location and the current weather forecast (*see, e.g., id.* ¶¶ 18, 19; *see also id.*, claims 1, 34). Reich discloses at paragraph 79, cited by the Examiner, that the user's actual consuming habits are monitored so that the system knows, in real time, what product was purchased, the time, the location, and the means of payment, including whether the customer used a weather related coupon. Yet we agree with Appellants that there is nothing in paragraph 79, or the other cited portions of Reich, that discloses or suggests correlating events between a selected item and related items, as called for in claim 1 (App. Br. 12–14). "Reich simply retrieves a weather forecast and then makes item suggestions (and generates coupons) based on the forecast" (*id.* at 13).

Responding to Appellants' arguments, the Examiner asserts in the Answer that Miller, not Reich, is relied on as disclosing related items, i.e., "identifying at least one item in the plurality of items selected for purchase

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by each customer in the plurality of customers that is related to the selected item to form a set of related items" (Ans. 3 (citing Miller ¶ 63)), and that "Reich reads on appellant's claimed invention in reference to 'event data'" (*id.* at 4). However, the Examiner does not adequately explain how, and we fail to see how, the combination of Miller and Reich, alone or in combination with Huang, discloses or suggests identifying events common to the selection of a selected item and the selection of at least one related item where the events result in the purchase of at least one related item, as called for in claim 1.

In view of the foregoing, we do not sustain the Examiner's rejection of claim 1 under 35 U.S.C. § 103(a). For the same reasons, we also do not sustain the rejection of dependent claims 4–13. *Cf. In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992) ("dependent claims are nonobvious if the independent claims from which they depend are nonobvious").

Independent Claims 14, 21, and 22 and Dependent Claims 16–20, 23, and 24

Independent claims 14, 21, and 22 include language substantially similar to the language of claim 1. Therefore, we do not sustain the Examiner's rejection of independent claims 14, 21, and 22, and claims 16–20, 23, and 24, which depend therefrom, for the same reasons set forth above with respect to claim 1.

Dependent Claims 2, 3, 15, and 25

Each of claims 2, 3, 15, and 25 ultimately depends from one of independent claims 1, 14, and 22. The Examiner's rejections of these dependent claims do not cure the deficiency in the Examiner's rejection of independent claims 1, 14, and 22. Therefore, we do not sustain the

Examiner's rejections of claims 2, 3, 15, and 25 under 35 U.S.C. § 103(a)
for the same reasons set forth above with respect to the independent claims.

DECISION

The Examiner's rejections of claims 1–25 under 35 U.S.C. § 103(a)
are reversed.

REVERSED